

OPEN MEETING ITEM

ORIGINAL

COMMISSIONERS
KRISTIN K. MAYES – Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP



0000093588

MICHAEL P. KEARNS
Interim Executive Director

ARIZONA CORPORATION COMMISSION

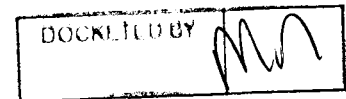
DATE: FEBRUARY 6, 2009

DOCKET NO: W-03512A-03-0279

TO ALL PARTIES:

Arizona Corporation Commission
DOCKETED

FEB 06 2009



Enclosed please find the recommendation of Administrative Law Judge Dwight D. Nodas. The recommendation has been filed in the form of an Order on:

**PINE WATER COMPANY
(EXTENSION OF TIME DEADLINE CONTAINED
IN DECISION NO. 70452)**

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

FEBRUARY 17, 2009

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

MARCH 3, 2009 and MARCH 4, 2009

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

RECEIVED

2009 FEB -6 P 2:39

**AZ CORP COMMISSION
DOCKET CONTROL**

MICHAEL P. KEARNS
INTERIM EXECUTIVE DIRECTOR

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 KRISTIN K. MAYES, Chairman
4 GARY PIERCE
5 PAUL NEWMAN
6 SANDRA D. KENNEDY
7 BOB STUMP

8 IN THE MATTER OF THE APPLICATION OF
9 PINE WATER COMPANY FOR A
10 DETERMINATION OF THE CURRENT FAIR
11 VALUE OF ITS UTILITY PLANT AND
12 PROPERTY AND FOR INCREASES IN ITS
13 RATES AND CHARGES BASED THEREON
14 FOR UTILITY SERVICE AND FOR APPROVAL
15 TO INCUR LONG-TERM DEBT.

DOCKET NO. W-03512A-03-0279

DECISION NO. _____

ORDER EXTENDING TIME
DEADLINE CONTAINED IN
DECISION NO. 70452

11 Open Meeting
12 March 3 and 4, 2009
13 Phoenix, Arizona

14 **BY THE COMMISSION:**

15 Having considered the entire record herein and being fully advised in the premises, the
16 Commission finds, concludes, and orders that:

17 **FINDINGS OF FACT**

18 1. On August 10, 2004, the Arizona Corporation Commission ("Commission") issued
19 Decision No. 67166 which approved a rate increase and authority to incur long-term debt for Pine
20 Water Company ("Pine Water" or "Company"), and imposed certain other conditions on the
21 Company. One of the conditions imposed on Pine Water by Decision No. 67166 was a requirement
22 that the Company file a rate application by June 1, 2008, using a 2007 test year.

23 2. On February 27, 2008, Pine Water filed a Request for Extension of Deadline to File
24 Rate Case. Therein, the Company stated that its extension request was justified because it was
25 working with the Pine-Strawberry Water Improvement District ("PSWID") on a deep well project in
26 Strawberry, Arizona ("K2 Well"), and that it had begun to explore the possible acquisition of another
27 deep well in Pine, Arizona. The Company also claimed that the earlier filing deadline set forth in
28

1 Decision No. 67166 would not enable it to include the investments in either of the deep well projects,
2 and would result in a "pancaking" of rate applications. Pine Water asserted that the public interest
3 would not be served by requiring multiple rate applications and the Company therefore requested that
4 the rate case filing deadline be extended by one year, until June 1, 2009.

5 3. On March 12, 2008, the Commission's Utilities Division ("Staff") filed a
6 Memorandum recommending approval of the extension request.

7 4. On August 6, 2008, the Commission issued Decision No. 70452 which granted the
8 Company an extension of time, until June 1, 2009, to file a rate application in accordance with the
9 requirement set forth in Decision No. 67166. Decision No. 70452 also indicated that no additional
10 extensions would be granted absent extraordinary circumstances.

11 5. On December 15, 2008, Pine Water filed a Second Request for Modification of
12 Deadline to File Rate Case. The Company seeks to vacate entirely the rate case filing requirement
13 given the pending arbitration and litigation between Pine Water and the PSWID regarding the K2
14 Well project and a condemnation action by the PSWID. Pine Water claims that neither the Company
15 nor its customers would benefit from the filing of a rate case until the cloud of the condemnation
16 proceeding has been removed. Alternatively, Pine Water requests that the Company should be
17 ordered only to file a rate case within 6 months of a final determination that the PSWID will not
18 condemn the Company's assets.

19 6. On January 28, 2009, Staff filed a Memorandum recommending denial of the request
20 to vacate the rate case filing requirement. Staff recommended instead that the filing date be amended
21 to require a filing no later than June 1, 2010, using a 2009 test year. Staff acknowledged that the
22 pending arbitration and litigation between the Company and the PSWID will be costly, and that
23 requiring a rate filing this year would be cost prohibitive for Pine Water given its current financial
24 circumstances. Staff states that the arbitration and litigation are likely to be lengthy and if the
25 Company's financial health does not improve, a rate case may be necessary before those court
26 proceedings conclude. Staff therefore recommends a one-year extension of the current rate case
27 filing requirement, but that no additional extensions be granted.

28 7. On February 5, 2009, Pine Water filed a Notification of Acceptance of Staff

1 Recommendations Concerning Pine Water Company's Second Request for Modification of Deadline
2 to File rate Case. In its filing, the Company states that it accepts Staff's recommendation to limit the
3 requested extension for only one additional year.

4 **CONCLUSIONS OF LAW**

5 1. Pine Water Company is a public service corporation within the meaning of Article XV
6 of the Arizona Constitution and A.R.S. §§40-281 and 40-282.

7 2. The Commission has jurisdiction over Pine Water Company and the subject matter of
8 the extension request addressed herein.

9 3. Staff's recommendations, as modified herein, are reasonable and should be adopted.

10 **ORDER**

11 IT IS THEREFORE ORDERED that Pine Water Company is hereby granted an extension of
12 time, until June 1, 2010, to file a rate application. The application shall be based on a 2009 test year.

13 ...

14 ...

15 ...

16 ...

17 ...

18 ...

19 ...

20 ...

21 ...

22 ...

23 ...

24 ...

25 ...

26 ...

27 ...

28

1 IT IS FURTHER ORDERED no additional extensions of time will be granted regarding this
2 matter absent extraordinary circumstances.

3 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

4 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
5
6

7 CHAIRMAN _____ COMMISSIONER _____

8
9
10 COMMISSIONER _____ COMMISSIONER _____ COMMISSIONER _____

11 IN WITNESS WHEREOF, I, MICHAEL P. KEARNS, Interim
12 Executive Director of the Arizona Corporation Commission,
13 have hereunto set my hand and caused the official seal of the
14 Commission to be affixed at the Capitol, in the City of Phoenix,
15 this _____ day of _____, 2009.

16 _____
17 MICHAEL P. KEARNS
18 INTERIM EXECUTIVE DIRECTOR

19 DISSENT _____

20
21 DISSENT _____
22
23
24
25
26
27
28

1 SERVICE LIST FOR: PINE WATER COMPANY

2 DOCKET NO. W-03512A-03-0279

3
4 Jay L. Shapiro
Patrick J. Black
FENNEMORE CRAIG
5 3003 N. Central Ave., Suite 2600
Phoenix, AZ 85012
6 Attorneys for Pine Water Company

7 Robert M. Cassaro
P.O. Box 1522
8 Pine, AZ 85544

9 John O. Breninger
P.O. Box 2096
10 Pine, AZ 85544

11 Pine-Strawberry Water Improvement District
P.O. Box 134
12 Pine, AZ 85544

13 Janice Alward, Chief Counsel
Legal Division
14 ARIZONA CORPORATION COMMISSION
1200 West Washington Street
15 Phoenix, AZ 85007

16 Ernest G. Johnson, Director
Utilities Division
17 ARIZONA CORPORATION COMMISSION
1200 West Washington
18 Phoenix, AZ 85007